

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

LINDA A. WATTERS, COMMISSIONER,
OFFICE OF FINANCIAL AND INSURANCE
SERVICES FOR THE STATE OF MICHIGAN,

Petitioner,
v.

Case No. 03-1127-CR
Hon. William E. Collette

THE WELLNESS PLAN,
a Michigan health maintenance organization

Respondent.

_____/

R. Christopher Cataldo (P39353)
Richard E. Kruger (P57142)
Jaffe, Raitt, Heuer & Weiss, PC
Attorney for Bio-Medical Applications
of Michigan, Inc., Spectra East, Inc.,
Spectra Laboratories, Inc.,
Bio-Medical Applications of Texas, Inc.
and Bio-Medical Applications of Ohio, Inc.
27777 Franklin Road, Ste. 2500
Southfield, MI 48034
248.351.3000

**BRIEF OF BIO-MEDICAL APPLICATIONS OF MICHIGAN, INC., SPECTRA EAST,
INC., SPECTRA LABORATORIES, INC., BIO-MEDICAL APPLICATIONS OF
TEXAS, INC. AND BIO-MEDICAL APPLICATIONS OF OHIO, INC.,
ON ISSUE OF PRIORITY OF PROVIDER CLAIMS**

Creditors Bio-Medical Applications of Michigan, Inc., Spectra East, Inc., Spectra Laboratories, Inc., Bio-Medical Applications of Texas, Inc. and Bio-Medical Applications of Ohio, Inc., by their attorneys R. Christopher Cataldo and Richard E. Kruger of Jaffe, Raitt, Heuer & Weiss, P.C., submit this brief relative to their class 2 claims.

INTRODUCTION

Bio-Medical Applications of Michigan, Inc., Spectra East, Inc., Spectra Laboratories, Inc., Bio-Medical Applications of Texas, Inc. and Bio-Medical Applications of Ohio, Inc.

(collectively, the “Claimants”) hold aggregate claims in excess of \$1,000,000 that are entitled to class 2 priority pursuant to MCL § 500.8142(1)(b).

ARGUMENT

Claimants’ claims arise out of the health maintenance contracts, which are like insurance policies, issued by The Wellness Plan (“TWP”) and, therefore, are entitled to class 2 priority. MCL § 500.8142(1)(b) provides in pertinent part that:

Class 2. Except as otherwise provided in this section, all claims under policies for loss incurred, including third party claims, and all claims of a guaranty association.

Claimants are Affiliated providers that provided medical services directly to TWP members under TWP health maintenance contracts. For purposes of this issue, the HMO contracts are the same as insurance policies, the members are the insured and the losses are the medical expenses that are to be paid to the providers, such as Claimants. Members pay TWP to obtain medical services and Claimants are prohibited from billing patients directly. *See* MCL § 500.3259(3). Additionally, TWP had to maintain certain financial covenants, such as minimum deposits, and had reporting requirements, similar to insurance companies. *See* MCL §§ 500.3551, 500.3553 and 500.3555. TWP was also required to obtain reinsurance. *See* MCL § 500.3559 (Claimants’ claims are not for reinsurance). Moreover, statutory insolvency provisions treat health maintenance contracts and health insurance as one and the same. *See, e.g.,* MCL § 500.3563. Claimants’ claims fall squarely within the Class 2 priority as they are for medical services rendered to patients in accordance with TWP’s health maintenance contracts.

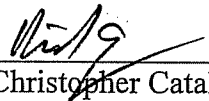
Claimants are not general Class 5 creditors. They did not provide general services to TWP, such as for lawn care or building maintenance and did not supply goods, such as paper

products, computer equipment or the like. Claimants provided medical services pursuant to insurance policies and, therefore, must be classified as Class 2 claimants.

WHEREFORE, Claimants request that this Court classify Claimants' claims for medical services provided as Class 2 claims pursuant to MCL 500.8142(1)(b).

Respectfully Submitted,

Jaffe, Raitt, Heuer, & Weiss,
Professional Corporation



R. Christopher Cataldo P39353
Richard E. Kruger P57142
Attorneys for Claimants

Dated: April 20, 2005

1066620.01